

# Improvement of local intangible cultural heritage system -- Taking Shanxi Province as an example

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**Abstract:** Intangible Cultural Heritage contains the civilization and history of different nationalities and regions, and it is the continuation of national spirit and the embodiment of cultural diversity. Shanxi is one of the birthplaces of Chinese civilization. Due to the uniqueness of intangible cultural heritage in Shanxi, it is difficult to apply the intangible cultural heritage law in this province. Under the guidance of intangible cultural heritage law, this paper puts forward local legislative suggestions for the protection of intangible cultural heritage in Shanxi at the legislative level, responsibility division, incentive system and other levels, and promotes the local legislation of intangible cultural heritage in Shanxi.

**Key words:** intangible cultural heritage; Local legislation; protect

## 1. Overview of legislation on Intangible Cultural Heritage

### 1.1 A survey of legislation on intangible cultural heritage in China

At the national level, China's intangible cultural heritage legislation has experienced a process from scratch to rise to the gradual improvement of the national will. From 2003 to 2008, China successively promulgated the law on the protection of national and folk traditional culture (Draft), the Interim Measures for the protection and management of national intangible cultural heritage, and the Interim Measures for the identification and management of representative inheritors of national intangible cultural heritage projects. The intangible cultural heritage law of the people's Republic of China (hereinafter referred to as the "intangible cultural heritage law") issued in 2011 is the most effective legal document in the field of intangible cultural heritage protection in China. Since then, the protection of intangible cultural heritage has entered a legal stage in a real sense.

### 1.2 Overview of legislation on intangible cultural heritage in Shanxi Province

At the regional level, since the intangible cultural heritage law was formally promulgated and implemented, all provinces, autonomous regions and municipalities across the country have drafted and promulgated local laws and regulations as well as regulations on the protection of intangible cultural heritage in various regions. As far as Shanxi Province is concerned, its intangible cultural heritage legislation has changed from project simplification to systematization and integration.

The regulations of Shanxi Province on Intangible Cultural Heritage (hereinafter referred to as the "Regulations of Shanxi Province on intangible cultural heritage") was promulgated in 2012. The regulations include the investigation and identification of intangible cultural heritage projects, the establishment of a list of representative intangible cultural heritage projects and legal responsibilities. Subsequently, the norms and technical standards for the preservation of intangible cultural heritage projects in Shanxi Province (trial version) and the guiding opinions on strengthening the management of Intangible Cultural Heritage Archives were also promulgated and implemented. In 2022, the requirements for the application, identification and evaluation of intangible cultural heritage workshops were clearly stipulated in the measures for the identification and management of intangible cultural heritage workshops.

## 2. Problems in current legislation of intangible cultural heritage protection

### 2.1 Unclear division of protection and management rights and responsibilities

At present, the laws and regulations on intangible cultural heritage protection contain some problems, such as imperfect planning, unclear protection means, unclear responsibilities of competent units, and incomplete management methods. For example, articles 6 and 7 of the regulations of Shanxi Province on intangible cultural heritage only list a large number of protection institutions, but only roughly stipulate the division of work by emphasizing "respective responsibilities", "respective articles of association", "corresponding protection work" and other expressions. In practice, if there is a problem of buck passing or competition for jurisdiction, the relevant law enforcement will lack the basis for resolution in the provisions; However, there is no clear and detailed provision on "guidance and support from the competent cultural authorities". The provisions on "the Federation of literary and artistic circles and other organizations" lack systematic guidance and support, and only protect intangible cultural heritage through "their own articles of association".

### 2.2 The standards of identification and inheritance system are general

In terms of the identification system of intangible cultural heritage inheritors, the relevant regulations on the identification and management of inheritors are relatively general and vague. For example, Articles 18 and 21 of the regulations of Shanxi Province on intangible cultural heritage only stipulate the identification conditions, obligations and responsibilities of inheritors. The measures for the administration of representative inheritors of provincial intangible cultural heritage (hereinafter referred to as the "measures") in 2022 specifies the cycle of declaration and evaluation of inheritors, but in terms of supervision, management and evaluation mechanism, Only the general reference in Article 16 to "accept the guidance, management and assessment of the competent cultural and tourism authorities" has not further made a detailed assessment and evaluation standard.

In terms of the support system for intangible cultural heritage inheritors, Article 26 of the regulations of Shanxi Province on intangible

cultural heritage stipulates that governments at or above the county level should increase financial support for intangible cultural heritage protection under the premise of economic development. Article 17 of the measures lists the specific measures taken by the competent authorities to support the representative inheritors of intangible cultural heritage at the provincial level. At the same time, it stipulates the specific assistance measures for the representative inheritors of intangible cultural heritage who need to be supported economically. However, there is no special budget law and Implementation Rules for intangible cultural heritage inheritance funds. At the same time, the existing laws on the amount of subsidies for inheritors are relatively low, and there is a lack of supervision and restriction measures for capital investment.

In terms of the recognition system for intangible cultural heritage inheritors, the legal incentive measures for inheritors are not enough. Articles 21 and 22 of the measures give honorary recognition and public reports to provincial intangible cultural heritage representative inheritors who have lost the ability of inheritance and died, but there is a lack of incentive measures for current inheritors. In terms of the training system of inheritors, there is a lack of innovative and guiding provisions on the training ways of inheritors in the legal provisions

#### 2.3 It is difficult to give consideration to intellectual property protection of intangible cultural heritage

The protection and regulation of intangible cultural heritage in China has long been based on administrative means, ignoring the protection of intellectual property rights. Some people, units and social organizations will have concerns about this, limiting the inheritance and protection of intangible cultural heritage, but intellectual property rights are the most effective civil means of intangible cultural heritage protection at this stage. The provisions on intellectual property protection in the intangible cultural heritage law and the intangible cultural heritage regulations of Shanxi Province are relatively vague. At present, domestic scholars have made a lot of research on the path of intellectual property protection in Intangible Cultural Heritage Inheritance, such as making full use of the intellectual property system, protecting handicrafts and traditional skills with trademark rights, and protecting traditional scientific and technological intangible cultural heritage with patent rights, Protect ancestral formulas and unique skills with trade secrets. But the current research mainly focuses on intangible cultural heritage as public goods. One of the difficulties of Intangible Cultural Heritage Inheritance is the difficulty of maintaining and safeguarding its own intellectual property rights. This difficulty lies not only in the identification of intangible cultural heritage intellectual property rights, but also in how to pay attention to the intellectual property rights in the later intangible cultural heritage practice and development. While ensuring the clarity of the ownership of intangible cultural heritage intellectual property rights between the public and the art heritage, we need to pay attention to the discussion of how to scientifically safeguard the intellectual property rights and other related rights and interests of intangible cultural heritage inheritors as much as possible.

#### 2.4 Incomplete inheritance mechanism and inadequate institutional supervision

Intangible cultural heritage has "three non natures", i.e. non tangible, non written and non stable. The protection and management measures in its inheritance are not perfect. With the continuous progress and improvement of intangible cultural heritage protection, the problems gradually appear.

In terms of inheritance mode, independent intangible cultural heritage protection institutions have not yet been popularized in various regions, and there is a lack of accountability provisions for the competent authorities. Some regions and departments in Shanxi Province can not avoid some phenomena that are not conducive to intangible cultural heritage protection, such as paying too much attention to utilization and ignoring management, focusing on development and failing to give consideration to protection; The staff pay little attention to it, and most of them are part-time or public welfare posts, with strong mobility; The lack of incentives for intangible cultural heritage heritage has led to the overall slow down of the process of intangible cultural heritage inheritors' training program, a serious shortage of traditional artisans, and the development and implementation of intangible cultural heritage protection and inheritance work has been greatly limited.

### 3. Legal suggestions on strengthening the protection of intangible cultural heritage

#### 3.1 Establishing the non-governmental protection system of intangible cultural heritage

According to the above analysis, the protection mode of public-private combination can obviously meet the current requirements of intangible cultural heritage protection in China. Specifically, it is to closely link civil affairs and administration at the legislative level.

The government is the subject of public law protection. It can reasonably use mandatory administrative means to carry out rescue protection for intangible cultural heritage that needs to be protected and saved. It should further refine and clarify the provisions for different types, clarify the functions and powers between the government and local departments, give full play to their functions in Intangible Cultural Heritage Inheritance and protection, and ensure the smooth progress of its inheritance; The inheritors, craftsmen and other subjects closely related to intangible cultural heritage should be given corresponding civil rights, and the private rights protection system of intangible cultural heritage should be established through private law. At the same time, the construction of non-governmental organizations of intangible cultural heritage should be promoted from the perspective of system, and their rights and obligations should be clarified to realize the proper use of intangible cultural heritage. At the same time, the premise for the acquisition of intangible cultural heritage Use the finished material income distribution to regulate private law. The close combination and mutual supplement of public and private protection can promote the formation of a legal protection mode of intangible cultural heritage with national system characteristics and provincial and regional characteristics.

#### 3.2 Clarify the multi-level protection system of intangible cultural heritage

Preservation and protection is the basic spirit of the regulations of Shanxi Province on intangible cultural heritage. In terms of the current situation of Shanxi Province, the precarious intangible cultural heritage resources need to be comprehensively protected from many aspects.

### 1. Productive protection system

Productive protection shows that the treatment of intangible cultural heritage should give consideration to reasonable protection and full utilization. At present, China's laws and documents related to intangible cultural heritage have not included productive protection provisions. The effect of the protection system is actually equivalent to the principle provisions, which can be implemented in the form of principles in the protection regulations, The specific rules are refined and clarified with reference to the guiding opinions on strengthening the productive protection of intangible cultural heritage. It is worth noting that productive protection is closely related to economic interests in practice, so there are considerable legal risks in merely using the productive protection system to regulate intangible cultural heritage protection. In order to avoid such risks as much as possible, we can establish a rescue protection system to supplement it.

### 2. Salvage protection system

The formulation of rescue protection system is an urgent measure for endangered intangible cultural heritage projects. Taking Shanxi intangible cultural heritage glass technology as an example, it is stipulated at the legislative level that digital technology should be incorporated to preserve the electronic data of intangible cultural heritage for a long time, and the production techniques and artistic works of intangible cultural heritage glass should be vividly and intuitively reproduced by using AR, VR and other technologies; We should strictly stipulate the responsibility of digital protection, clarify the boundary of digital protection, and combine it with intellectual property protection; Some compulsory administrative measures should also be taken to save the endangered intangible cultural heritage projects.

### 3. Integrated protection system

Integrity protection should take into account the integrity of time and space. In terms of time, we should further refine the provisions on the application, protection, management, inheritance, incentive and other processes of intangible cultural heritage through legislation. Refine the responsibilities of different management and protection departments and clarify the ownership of rights. Spatially, legislation regulates the ecological and cultural protection zones and other characteristic areas in Shanxi Province, taking into account the environment related to the preservation of intangible cultural heritage and the relationship between them while protecting the intangible cultural heritage ontology. For example, strictly stipulate the legal liability for the destruction of the necessary conditions such as the environment and ecology of intangible cultural heritage, and clarify the management subject and its responsibility of the cultural and ecological protection zone.

#### 3.3 Improving the legal identification system of inheritors in Intangible Cultural Heritage Inheritance

Clarify the recognition criteria of "proficiency" and "greater influence in a certain field" stipulated in Article 29 of the intangible cultural heritage law and Article 17 of the intangible cultural heritage regulations of Shanxi Province on the recognition conditions of intangible cultural heritage successors. Professional assessment and recognition of proficiency can be carried out through rating and other methods. The classification criteria of intangible cultural heritage should be strictly enforced, and the field standards should be determined through the dimensions of region and type, Quantify the actual effect and scientifically and reasonably evaluate the actual impact value.

#### 3.4 Improve the legal support and reward system for inheritors in Intangible Cultural Heritage Inheritance

First of all, the government's assistance to Intangible Cultural Heritage Inheritance activities is set as an obligatory provision, and the expression of "according to needs" in Article 30 of the intangible cultural heritage law is deleted, so as to clarify the government's obligation to help Intangible Cultural Heritage Inheritance activities and promote the development of intangible cultural heritage protection. Secondly, we should increase the protection provisions for general inheritors who have made important contributions except for representative inheritors, and give different levels of treatment policies to inheritors at different levels, so that the public can truly experience the significance and value of joining the ranks of intangible cultural heritage inheritance. Thirdly, we should increase the assistance to the family members of the representative inheritors after their death. On the basis of the issuance of honorary certificates and public commendations, we can give them certain welfare benefits in the form of free payment in specific paid places.

## Epilogue

This paper makes an overall study of the legislative framework of the intangible cultural heritage protection law and the intangible cultural heritage protection regulations of Shanxi Province, and deeply analyzes the legislative blank or fuzzy areas and the refinable legislative space of the cities divided into districts represented by Shanxi Province. So as to achieve the purpose of better and more standardized inheritance and development of intangible cultural heritage throughout the country.

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